

## MEMORANDUM

TO: All Parties to Fibertech, D.T.E. 03-56  
FROM: Jesse S. Reyes, Hearing Officer  
DATE: July 21, 2003  
RE: Ground Rules

---

This proceeding shall be conducted in accordance with the provisions of G.L. c. 30A and 220 C.M.R. §§ 1.00 et seq., the Procedural Rules of the Department. In addition, the following ground rules shall apply to the conduct of the proceedings in this matter:

1. Exchange of Materials

The parties shall make arrangements for the expeditious exchange of materials, particularly discovery material, through the use of e-mail, hand delivery, facsimile transmission ("fax"), or other speedy means of delivery. Unless otherwise not feasible, the use of postal delivery should be avoided in the exchange of discovery material. Where material is delivered by means of e-mail or fax, a follow-up copy of the material must be otherwise delivered (use of postal delivery may be appropriate).

2. Filing of Materials

Fax or other means of electronic delivery are not substitutes for filing the original of all materials that must be filed with Mary L. Cottrell, Secretary of the Department. All materials shall be deemed to be filed or received on the date on which the original filing is received via mail or hand delivery by the Department Secretary.

3. Format

All discovery and record request documents filed with the Department and all documents offered as exhibits shall be accurately punched to fit a standard three-hole binder. All documents shall be accompanied by a cover letter describing the filing and a certificate of service.

Responses to information and record requests shall contain the following information:

- (a) set and question number,
- (b) recitation of request,
- (c) identity of person who will support the response,
- (d) the date of the response, and
- (e) whether the response revises or supplements an earlier response.

4. Number of Copies

The Department requires documents to be filed in the following manner:

One (1) original addressed to Mary L. Cottrell,  
Three (3) copies addressed to the hearing officer, and  
One (1) copy addressed to each staff member listed on the latest distribution list.

5. Electronic Copies

When practicable, copies of all nonproprietary documents that are filed with the Department must also be submitted to the Department in electronic format using one of the following methods: (1) by e-mail attachment to [dte.efiling@state.ma.us](mailto:dte.efiling@state.ma.us); or (2) on a 3.5" IBM-compatible floppy disk or CD-ROM. The text of the e-mail or the disk label must specify: (1) an easily identifiable case caption, (2) docket number, (3) name of the party submitting the filing, and (4) title of the document. The electronic filing should also include the name, title, and phone number of a person to contact in the event of questions about the filing. Electronic copies should be written in either Word Perfect (naming the document with a ".wpd" suffix), Microsoft Word (naming the document with a ".doc" suffix), or Adobe Acrobat (naming the document with a ".pdf" suffix). Data or spreadsheet responses should be compatible with Microsoft Excel. Documents submitted in electronic format will be posted on the Department's website, <http://www.mass.gov/dpu>. Electronic copies must also be provided to all persons on the distribution list for this proceeding.

6. Fax Communications

Where information requests are sent to a party by means of fax (see ground rule number 1), the fax must be accompanied by telephone notification of the transmission. Failure to make prompt telephone notification may affect the timing of the response to the information request.

7. Proprietary Material

Where information or material is sought that is considered proprietary or confidential by one party, the parties should discuss the use of a non-disclosure agreement before coming to the Department for protection or compelled submission. The Department will make a reasonable effort to extend protection where appropriate within the requirements of the law and in consideration of the policy interests regarding public access. See G.L. c. 25, § 5D; G.L. c. 66, § 10; G.L. c. 4, § 7, cl. twenty-sixth.

A party requesting confidential treatment must submit its request in writing and state the reasons therefor. The party seeking such treatment has the burden to demonstrate that the materials should be afforded the treatment requested in light of the presumption that such information is a public record. Even where a party proves such need for confidential treatment, the Department may protect only so much of that information as is necessary to meet the established need and may limit the terms or length of time such protection will be in effect.

Any request for confidential treatment must include, in a sealed envelope, one unredacted copy of the materials for which protection is sought, clearly marked with the words "CONFIDENTIAL" on the outside envelope as well as on each page of the materials. The unredacted copy should be submitted to the hearing officer. A redacted copy of the materials (marked as such) for the public docket should be filed with the Department along with the request for confidential treatment.

8. Motions

Consistent with 220 C.M.R. § 1.04(5), any motion, unless made during a hearing, shall be made in writing. This requirement includes any requests for extensions of time deadlines or continuances of hearing dates. Any party may file a written opposition to such motion within five days of such filing, unless otherwise indicated. Papers not served with the motion or opposition may be filed only with leave of the hearing officer.

The parties must first attempt resolution of any discovery dispute before coming to the Department for assistance. Prior to filing any motions for discovery orders, counsel for each of the parties shall confer in a good faith effort to narrow the areas of disagreement to the fullest possible extent. Counsel for the party who intends to file the motion shall be responsible for initiating the conference. All such motions shall contain a certificate stating that the conference was held, together with the date and time of the conference and the names of all participating parties. Motions unaccompanied by such certificate will be denied without prejudice to renewal when accompanied by the required certificate.

All requests for proprietary treatment or motions arising out of a party's response to or asserted failure to comply with an information or record request, shall be accompanied by a brief. With respect to each request for proprietary treatment or other information/record request at issue, the brief shall set forth separately and in the following order: (1) the text of the request, (2) the opponent's response, and (3) a specific legal and factual argument.

For all motions and other interlocutory matters, copies of any cited cases, decisions or other supporting authorities shall be provided to the hearing officer in a separate appendix to the motion.

9. Information Requests

Information requests are discovery in the nature of interrogatories and requests for documents (cf. Mass. R. Civ. P. 33, 34).

Parties shall respond to information requests within **ten (10) calendar days of receipt of the request**, unless otherwise indicated. The parties must first attempt resolution of any discovery dispute before coming to the Department for assistance.

For purposes of discovery, a document shall be deemed to include writings, drawings, graphs, charts, photographs, phono-records, and other data compilations from which data can be obtained, or translated, if necessary, by the respondent into a reasonably usable form.

10. Offering of Exhibits

At least seven (7) days prior to the hearing, parties must submit a list of exhibits proposed to be offered as direct evidence, listing (1) the exhibit number and (2) a description of the exhibit.

The proponent of an exhibit must offer the Department five (5) bench copies of the proposed exhibit (standard three-hole punch). Nonconforming documents will not be marked. If only a part of a document is offered for marking and another party wishes to use the omitted part(s) in questioning or on brief, then that party must enter the missing part(s) into the record.

11. Late Filed Exhibits

Exhibits offered after the close of the hearings, if objected to by any party, labor under a heavy burden of untimeliness, for they would not be subject to cross-examination or rebuttal. Late-filed exhibits must be accompanied by a motion to reopen the record and

supported by appropriate affidavits. Only for good cause shown, in the face of an objection, will such exhibits be marked and admitted into evidence.

12. Exhibit Format

Any exhibit offered in this proceeding must contain an internally consistent and usable form of referencing. While most documents that are offered as exhibits have pre-numbered pages, some offered exhibits (especially those exhibits consisting of excerpts from more than one document or consisting of a compilation of notes) have pages that are not numbered or are not consistently numbered.

Documents of three pages or more without a preexisting referencing system must be marked with consecutive page numbers before the document is offered as an exhibit or before it is otherwise distributed for use in the hearing. Where it is necessary to supply page numbers for an exhibit, the proponent of the exhibit should add the numbers in some way that differentiates the additions from the preexisting text and should identify his method of addition on the record upon presentation for marking. Documents without an acceptable referencing system will not be marked for identification and may not be used at the hearing.

Documents submitted as exhibits shall be premarked by the parties using the following format, in the upper right-hand corner of each exhibit:

D.T.E. 03-56  
Exhibit \_\_\_\_\_  
Date \_\_\_\_\_  
H.O. Reyes

13. Record Requests

Responses to record requests are written substitutes to oral answers where fault of memory or complexity of subject precludes a responsive answer by the witness in the hearing. As such, they are part of the record and the evidence, unless challenged as unresponsive and expunged in whole or part. Record requests shall not be used as a substitute for discovery or as a substitute for re-direct examination.

Objections to record requests shall be made at the time the request is made, and in no event later than the end of the next Department working day.

14. Address of Filings

The original of all filings must be filed with Mary L. Cottrell, Secretary of the Department.

15. Hearing Arrangements

Evidentiary hearings will be conducted at the Department's offices at One South Station, Second Floor, Boston, Massachusetts. These hearings will begin each day at 10:00 a.m., unless otherwise advised.

These ground rules are deemed consistent with the orderly conduct of this proceeding. Exceptions to any ground rule may be made by the Hearing Officer for good cause shown.